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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 JOSE J. GONSALEZ,

12 Plaintiff,

13 v.

14 EMPLOYMENT DEVELOPMENT  
15 DEPARTMENT EDD, et al.,

16 Defendants.

Case No. 2:18-cv-08607 AB (ADS)

ORDER ACCEPTING REPORT AND  
RECOMMENDATION OF UNITED STATES  
MAGISTRATE JUDGE AND DISMISSING  
CASE

17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the pleadings and all the  
18 records and files herein, including the Report and Recommendation (“R&R”) dated  
19 December 26, 2018 [Dkt. No. 22], Plaintiff’s Objections to the R&R (“Objections”) [Dkt.  
20 No. 23], and the Declaration in Support of Objections (“Declaration”) [Dkt. No. 24], and  
21 has made a de novo determination of those portions to which Plaintiff objected.

22 Nothing in the Objections refutes the Magistrate Judge’s finding that the Court  
23 lacks subject matter jurisdiction over the Complaint in its entirety. See [Dkt. No. 22,  
24 p. 18]. As the R&R explained, the Tax Injunction Act (“TIA”) prohibits Plaintiff’s claims

1 under 42 U.S.C. § 1983 and the Racketeer Influenced and Corrupt Organizations Act  
2 (“RICO”) because the Complaint seeks to restrain “the assessment, levy or collection of  
3 [a] tax under State law.” [Dkt. No. 22, p. 12 (quoting 28 U.S.C. § 1341)].

4 In his Objections, Plaintiff argues that the TIA does not apply to his claims  
5 because “there is no law, rule, or policy that allows the multiplication of a tax  
6 assessment.”<sup>1</sup> [Dkt. No. 23, p. 1]. However, the R&R addressed this argument,  
7 explaining that, “[t]he gravamen of the Complaint, in fact all the factual allegations,  
8 relate to Plaintiff’s assertion that the EDD, through its employees, improperly assessed  
9 and collected taxes,” that Plaintiff is seeking the return of the paid portion of the  
10 assessed tax and to avoid paying the remaining balance, and that “[f]or the Court to  
11 order the return of the paid tax, or compensatory damages in the same amount, the  
12 Court must declare that the taxes were wrongfully assessed.” [Dkt. No. 22, pp. 11-12].  
13 The Magistrate Judge therefore found that the Complaint in its entirety falls within the  
14 language of the TIA. [*Id.*, p. 12].

15 Next Plaintiff argues that Franchise Tax Bd. v. Hyatt, 136 S. Ct. 1277 (2016)  
16 (“Hyatt II”) and Franchise Tax Bd. v. Hyatt, 139 S. Ct. 1485 (2019) (“Hyatt III”) support  
17 the proposition that California “has not been accommodating to a meaningful and  
18 expedient way of dealing with challenges to tax assessments.” [Dkt. No. 23, pp. 3-4].  
19 The Court understands this as an argument that the TIA does not apply because there is  
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21 <sup>1</sup> Plaintiff’s repeated assertion that defendant Employment Development Department  
22 EDD’s (“EDD”) counsel made the statement, “there is no law, rule, or policy that allows  
23 the multiplication of a tax assessment,” is not supported by the record of the hearing.  
24 Defendant EDD’s counsel stated that he had not conducted any factual investigation and  
had no knowledge of the multiplication, but that the “multiplication” appeared to be an  
application of the tax assessment to multiple years.

1 no “plain, speedy and efficient remedy” available in California courts, as is required by  
2 the TIA. See 28 U.S.C. § 1341. However, neither of these cases stand for the asserted  
3 proposition, and nothing within either case overturns the Supreme Court’s finding in  
4 California v. Grace Brethren Church, 457 U.S. 393, 416-17 (1982), that the tax refund  
5 procedures in California meet the “plain, speedy and efficient” standard under the TIA.  
6 See Hyatt II, 136 S. Ct. at 1283 (2016) (finding Nevada courts’ application of special  
7 damages rule violated Full Faith and Credit Clause); Hyatt III, 139 S. Ct. at 1499  
8 (holding states are immune from private suits brought in courts of other states).

9 Plaintiff’s final arguments pertain to amendments he proposes to make in a First  
10 Amended Complaint. [Dkt. No. 23, pp. 5-7]. The R&R explained that leave to amend  
11 should not be granted because amendment would be futile. [Dkt. No. 22, p. 18]; see also  
12 Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (affirming dismissal with  
13 prejudice where amendment could not cure complaint). The Court has also reviewed  
14 and considered Plaintiff’s Motion for Leave to File First Amended Civil Rights  
15 Complaint (“Motion to File FAC”), which was filed after the issuance of the R&R,  
16 Defendants’ Opposition to Motion for Leave to File First Amended Civil Rights  
17 Complaint, and Plaintiff’s Reply to Defendants’ Opposition to Motion for Leave to File  
18 First Amended Civil Rights Complaint. [Dkt. Nos. 25, 26, 28]. Plaintiff’s Motion to File  
19 FAC includes similar arguments as the Objections and a proposed First Amended  
20 Complaint (“FAC”). [Dkt. No. 25]. However, nothing in the Objections, Motion to File  
21 FAC, or proposed FAC refute the findings in the R&R that amendment would be futile.

22 In the Motion to File FAC, Plaintiff states, “The new complaint maintains the  
23 counts and allegations against the same defendants from the original complaint,” and  
24 adds facts and claims related to “developments that have occurred since the original

1 complaint was filed.” [Dkt. No. 25, p. 1]. Indeed, the allegations and federal claims in  
2 the proposed FAC all relate to Plaintiff’s assertion that the EDD, through its employees,  
3 improperly assessed and collected taxes. See [Id., pp. 7-26]. Further, the relief Plaintiff  
4 seeks is to restrain “the assessment, levy or collection of [a] tax under State law,”  
5 depriving the Court of jurisdiction pursuant to 28 U.S.C. § 1341. See, e.g., [Id., p. 12  
6 (seeking reimbursement for taxes levied from bank account and client and punitive  
7 damages based on amount of tax assessment)].

8 Plaintiff’s attempt to add state tort claims based on the EDD’s conduct while  
9 collecting taxes will not give rise to federal jurisdiction. Without jurisdiction over the  
10 federal claims, the Court lacks supplemental jurisdiction over Plaintiff’s state law tort  
11 claims. See Herman Family Revocable Tr. v. Teddy Bear, 254 F.3d 802, 805 (9th  
12 Cir. 2001) (holding supplemental jurisdiction over state law claims cannot exist without  
13 original jurisdiction over federal claim).

14 Accordingly, IT IS HEREBY ORDERED:

- 15 1. The United States Magistrate Judge’s Report and Recommendation,  
16 [Dkt. No. 22], is accepted;
  - 17 2. Defendants’ Motion to Dismiss is granted;
  - 18 3. The case is dismissed for lack of subject matter jurisdiction without leave  
19 to amend;
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4. Plaintiff's Motion to File FAC is denied; and

5. Judgment is to be entered accordingly.

**DATED:** September 10, 2019

André B.

**THE HONORABLE ANDRÉ BIROTTE JR.**  
United States District Judge